

ORIGINAL

1 LYNN HUBBARD, III, SBN 69773
2 SCOTTLINN J HUBBARD, IV, SBN 212970
3 **DISABLED ADVOCACY GROUP, APLC**
4 12 Williamsburg Lane
5 Chico, CA 95926
6 Telephone: (530) 895-3252
7 Facsimile: (530) 894-8244

8 Attorneys for Plaintiff

FILED

08 FEB 20 PM 4:06

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

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12
13 BARBARA HUBBARD,

14 Plaintiff,

15 vs.

16 ST. MAR ENTERPRISES, INC. dba
17 TACO BELL #020470; ST. JOHN,
18 LLC,

19 Defendants.

No. '08 CV 0327 BTM RBB

Plaintiff's Complaint

I. SUMMARY

1. This is a civil rights action by plaintiff Barbara Hubbard (“Hubbard”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Taco Bell #020470
1090 Outer Road
San Diego, CA 92154
(hereafter “the Restaurant”)

2. Hubbard seeks damages, injunctive and declaratory relief, attorney fees and costs, against St. Mar Enterprises, Inc. dba Taco Bell #020470 and St. John, LLC (collectively “Taco Bell”) pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Hubbard’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Taco Bell owns, operates, or leases the Restaurant, and consists of a person (or persons), firm, or corporation.

8. Hubbard has multiple conditions that affect one or more major life functions. She requires the use of motorized wheelchair and a mobility-equipped

1 vehicle, when traveling about in public. Consequently, Hubbard is “physically
2 disabled,” as defined by all applicable California and United States laws, and a
3 member of the public whose rights are protected by these laws.

4 V. FACTS

5 9. The Restaurant is an establishment serving food and drink, open to
6 the public, which is intended for nonresidential use and whose operation affects
7 commerce.

8 10. Hubbard visited the Restaurant and encountered barriers (both
9 physical and intangible) that interfered with—if not outright denied—her ability
10 to use and enjoy the goods, services, privileges, and accommodations offered at
11 the facility. To the extent known by Hubbard, the barriers at the Restaurant
12 included, but are not limited to, the following:

- 13 • The tow away signage posted is not correct;
- 14 • There is no directional signage along the accessible route from the public
15 way;
- 16 • The ramp along the accessible route has detectable warnings that are
17 mounted on the ramp itself, rather than before it;
- 18 • The van accessible signage posted is not correct;
- 19 • The disabled parking space, as well as the adjacent access aisle are too
20 small;
- 21 • The handles on the entrance door are the “panel-type,” and not accessible;
- 22 • There is no International Symbol of Accessibility mounted to the side of
23 the entrance door;
- 24 • The floor mats on the interior at the entrance door are not securely
25 attached to the floor;
- 26 • The table designated as accessible seating is not in fact accessible as it
27 lacks a space 30 inches wide, 28 inches high and 19 inches deep per
28 Figure 45 (*see* Exhibit A attached hereto);

- 1 • The signage designating the table as accessible seating is too small;
- 2 • In the restroom, the stall door is not self-closing;
- 3 • There is not handle mounted below the lock on the interior of the stall
- 4 door;
- 5 • The coat hanger is mounted too high;
- 6 • The disposable seat cover dispenser is mounted behind the water closet
- 7 and out of reach;
- 8 • The water closet is an obstruction to the disposable seat cover dispenser;
- 9 • The flush valve is not located on the wide side of the water closet;
- 10 • The side grab bar is not mounted 12 inches from the back wall
- 11 • The toilet tissue dispenser is mounted too high and protrudes into the clear
- 12 maneuvering space needed to access the water closet;
- 13 • There is insufficient knee and toe clearance underneath the lavatory;
- 14 • The restroom door (when swung open) encroaches into the clear floor
- 15 space needed to access the electric hand dryer; and,
- 16 • The restroom door lacks the required 18 inches of strike side clearance on
- 17 the pull side.

18 These barriers prevented Hubbard from enjoying full and equal access.

19 11. Hubbard was also deterred from visiting the Restaurant because she
20 knew that the Restaurant's goods, services, facilities, privileges, advantages, and
21 accommodations were unavailable to physically disabled patrons (such as
22 herself). She continues to be deterred from visiting the Restaurant because of the
23 future threats of injury created by these barriers.

24 12. Hubbard also encountered barriers at the Restaurant, which violate
25 state and federal law, but were unrelated to her disability. Nothing within this
26 Complaint, however, should be construed as an allegation that Hubbard is
27 seeking to remove barriers unrelated to her disability.

1 13. Taco Bell knew that these elements and areas of the Restaurant were
2 inaccessible, violate state and federal law, and interfere with (or deny) access to
3 the physically disabled. Moreover, Taco Bell has the financial resources to
4 remove these barriers from the Restaurant (without much difficulty or expense),
5 and make the facility accessible to the physically disabled. To date, however,
6 Taco Bell refuses to either remove those barriers or seek an unreasonable
7 hardship exemption to excuse non-compliance.

8 14. At all relevant times, Taco Bell has possessed and enjoyed sufficient
9 control and authority to modify the Restaurant to remove impediments to
10 wheelchair access and to comply with the Americans with Disabilities Act
11 Accessibility Guidelines and Title 24 regulations. Taco Bell has not removed
12 such impediments and has not modified the Restaurant to conform to
13 accessibility standards. Taco Bell has intentionally maintained the Restaurant in
14 its current condition and has intentionally refrained from altering the Restaurant
15 so that it complies with the accessibility standards.

16 15. Hubbard further alleges that the (continued) presence of barriers at
17 the Restaurant is so obvious as to establish Taco Bell's discriminatory intent.¹
18 On information and belief, Hubbard avers that evidence of this discriminatory
19 intent includes Taco Bell's refusal to adhere to relevant building standards;
20 disregard for the building plans and permits issued for the Restaurant;
21 conscientious decision to the architectural layout (as it currently exists) at the
22 Restaurant; decision not to remove barriers from the Restaurant; and allowance
23 that the Restaurant continues to exist in its non-compliant state. Hubbard further
24 alleges, on information and belief, that Taco Bell is not in the midst of a remodel,
25 and that the barriers present at the Restaurant are not isolated (or temporary)
26 interruptions in access due to maintenance or repairs.²

27
28 ¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

² Id.; 28 C.F.R. § 36.211(b)

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Plaintiff's Complaint

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

16. Hubbard incorporates the allegations contained in paragraphs 1 through 15 for this claim.

17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Taco Bell discriminated against Hubbard by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Restaurant during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." *Id.* § 12181(9).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Hubbard alleges that Taco Bell can easily remove the architectural barriers at the Restaurant without much difficulty or expense, and that Taco Bell violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Taco Bell to remove the Restaurant’s barriers, then Taco Bell violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. On information and belief, the Restaurant was designed or constructed (or both) after January 26, 1992—independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Taco Bell violated the ADA by designing or constructing (or both) the Restaurant in a manner that was not readily accessible to the physically disabled public—including Hubbard—when it was structurally practical to do so.³

Failure to Make an Altered Facility Accessible

26. On information and belief, the Restaurant was modified after January 26, 1992, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 28. Here, Taco Bell altered the Restaurant in a manner that violated the
2 ADA and was not readily accessible to the physically disabled public—including
3 Hubbard—to the maximum extent feasible.

4 Failure to Modify Existing Policies and Procedures

5 29. The ADA also requires reasonable modifications in policies,
6 practices, or procedures, when necessary to afford such goods, services,
7 facilities, or accommodations to individuals with disabilities, unless the entity
8 can demonstrate that making such modifications would fundamentally alter their
9 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

10 30. Here, Taco Bell violated the ADA by failing to make reasonable
11 modifications in policies, practices, or procedures at the Restaurant, when these
12 modifications were necessary to afford (and would not fundamentally alter the
13 nature of) these goods, services, facilities, or accommodations.

14 31. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive
15 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
16 U.S.C. § 12205.

17 32. Hubbard also seeks a finding from this Court (*i.e.*, declaratory
18 relief) that Taco Bell violated the ADA in order to pursue damages under
19 California's Unruh Civil Rights Act or Disabled Persons Act.

20 VII. SECOND CLAIM

21 **Disabled Persons Act**

22 33. Hubbard incorporates the allegations contained in paragraphs 1
23 through 30 for this claim.

24 34. California Civil Code § 54 states, in part, that: Individuals with
25 disabilities have the same right as the general public to the full and free use of
26 the streets, sidewalks, walkways, public buildings and facilities, and other public
27 places.

35. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

36. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

37. Here, Taco Bell discriminated against the physically disabled public—including Hubbard—by denying them full and equal access to the Restaurant. Taco Bell also violated Hubbard’s rights under the ADA, and, therefore, infringed upon or violated (or both) Hubbard’s rights under the Disabled Persons Act.

38. For each offense of the Disabled Persons Act, Hubbard seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

39. She also seeks to enjoin Taco Bell from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

VIII. THIRD CLAIM

Unruh Civil Rights Act

40. Hubbard incorporates the allegations contained in paragraphs 1 through 30 for this claim.

41. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

42. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

43. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

44. Taco Bell's aforementioned acts and omissions denied the physically disabled public—including Hubbard—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

45. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Hubbard by violating the Unruh Act.

46. Hubbard was damaged by Taco Bell's wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

47. Hubbard also seeks to enjoin Taco Bell from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

48. Hubbard incorporates the allegations contained in paragraphs 1 through 13 for this claim.

49. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

50. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

1 51. Hubbard alleges the Restaurant is a public accommodation
2 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
3 and Safety Code or Government Code § 4450 (or both), and that the Restaurant
4 was not exempt under Health and Safety Code § 19956.

5 52. Taco Bell's non-compliance with these requirements at the
6 Restaurant aggrieved (or potentially aggrieved) Hubbard and other persons with
7 physical disabilities. Accordingly, she seeks injunctive relief and attorney fees
8 pursuant to Health and Safety Code § 19953.

9 X. PRAYER FOR RELIEF

10 WHEREFORE, Hubbard prays judgment against Taco Bell for:

- 11 1. Injunctive relief, preventive relief, or any other relief the Court deems
12 proper.
- 13 2. Declaratory relief that Taco Bell violated the ADA for the purposes of
14 Unruh Act or Disabled Persons Act damages.
- 15 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
16 California Civil Code (but not both) according to proof.
- 17 4. Attorneys' fees, litigation expenses, and costs of suit.⁴
- 18 5. Interest at the legal rate from the date of the filing of this action.

19
20 DATED: February 18, 2008 DISABLED ADVOCACY GROUP, APLC

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22 

23 LYNN HUBBARD, III
24 Attorney for Plaintiff
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⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
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Plaintiff's Complaint

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Exhibit A

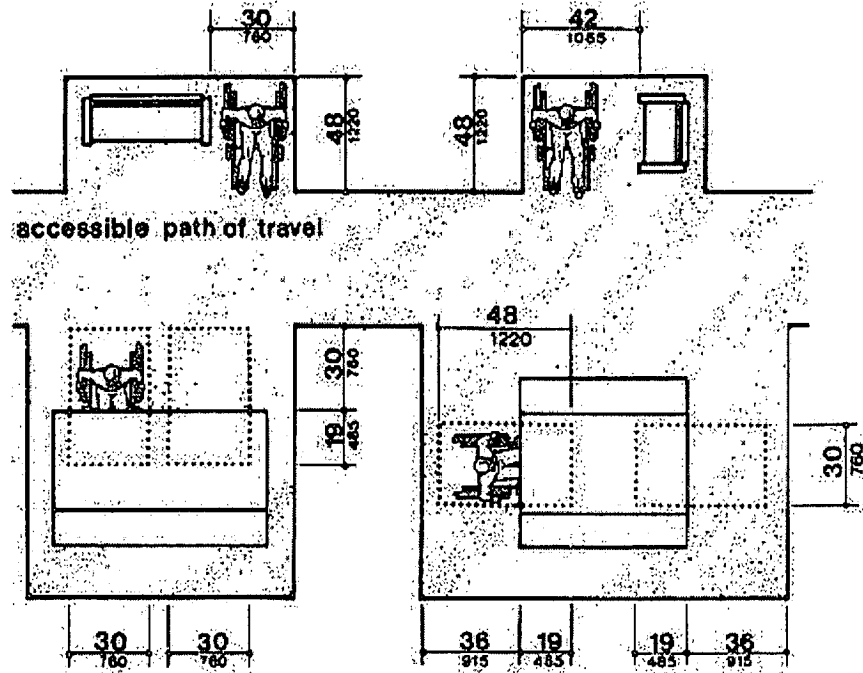


Fig. 45
Minimum Clearances for Seating and Tables

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BARBARA HUBBARD

(b) County of Residence of First Listed Plaintiff SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DISABLED ADVOCACY GROUP, APLC (530) 895-3252
12 WILLIAMSBURG LANE CHICO, CA 95926

DEFENDANTS

ST. MAR ENTERPRISES, INC. AND TACO BELL #020470; ST. JOHN, LLC

County of Residence of First Listed Defendant SAN DIEGO
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 CV 0327 BTM RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 12101, et seq.

Brief description of cause:
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/18/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 147886 AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE

su 2/20/08

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 147886 - SH
* * C O P Y * *
February 20, 2008
16:10:10**

Civ Fil Non-Pris
USAO #: 08CV0327
Judge.: BARRY T MOSKOWITZ
Amount.: \$350.00 CK
Check#: BC18572

Total-> \$350.00

FROM: HUBBARD V. ST MAR ENTERPRISES